

On December 12, 2016, [REDACTED] sent her an email notifying her that Complainant had expressed interest in the rental unit and that he wanted to negotiate for the rent to be \$1,500.00 rather than \$1,600.00 per month. She provided Respondent with a copy of Complainant's application materials. Respondent replied to [REDACTED] by email dated December 13, 2017, and requested that [REDACTED] obtain from Complainant all references from prior landlords and employers, information regarding his income and documents verifying that he was starting a new job with Verizon in Morristown, as he noted in his rental application. She also proposed a

counteroffer on the rent of \$1,550.00 per month.

██████ emailed Respondent on December 13, 2016, to tell her that Complainant accepted her \$1550.00 counteroffer for the monthly rent and to let Respondent know that Complainant wanted to the lease to start on January 7, 2017 as opposed to the January 1, 2017 start date that Respondent desired. She advised Respondent to request that Complainant start the lease early rather than on January 7, 2017.

In or around December 14, 2017, Respondent asked ██████ to request that Complainant meet with her prior to moving forward with the application process. In an email to Respondent dated December 16, 2016, ██████ explained that Complainant could not meet with her before January 7, 2017, because he was flying to North Carolina to spend the holidays with his family and would not be able to return to New Jersey before that date. She noted that Complainant's agent would handle the transaction through email and suggested that Respondent move forward with Complainant's application. ██████ followed up with an email later that day in which she reported Complainant's willingness to write to Respondent or meet with her via Skype in lieu of meeting her in person.

On December 16, 2016, at 11:38 p.m., ██████ emailed Respondent to tell her that two other parties had expressed interest in the rental unit. With regard to Complainant, she noted that he would not be able to meet Respondent in person and would likely refuse to sign the addendum to the lease. However, she pointed out that he had provided names of individuals that Respondent could contact to verify his past employment and his future employment at Verizon. ██████ told Respondent to decide about Complainant's application rather than delaying her decision.

Respondent emailed ██████ on December 17, 2016, 10:57 a.m.:

I appreciate your comments on the Addendum and I know it is unwieldy but everything on it has been developed over time from previous lacks. If in the last three days Jenkins has resisted or refused to sign the Addendum; not provided the banking ref (I'm not able to steal his damn money nor would be my banker – the fact that he may have “x” dollars today doesn't mean that he has no record of bad checks, or late pays on any agreements, and will have such a large sum on hand throughout the lease – which matters not to me; I like to see the kinds of things, as does ██████, which a credit report shows and which most applicants are willing to submit); nor prior LL's reference (or at least name and address); a credit score is not a credit report. If he's a lawyer he knows these are normal and needed.

If Jenkins is unwilling to comply at this stage with simple common (sic) application matters, what would it be like later? I don't call this 4 day period any dragging out on my part, only ended today with the submission of the normal first item, after the back and forth of the price negotiation and the non productive questions about submissions and signing the Addendum taking up the last 4 days only.

If there's any dragging it is encompassed by Jenkins resistance to items I consider both normal and protective of the LL, and as originally asked. Most applicants see that this shows what would be asked of anyone looking to live next door later and feel reassured of my care, custody and control.

A reference from the prior LL and banking data is not too much to ask but I agree this is going nowhere.

If he won't sign the Addendum, as you mention today, it definitely is over. Strange behavior for a Sagittarius. [*Sic* throughout]

After receiving a personal email from Complainant on December 18, 2016, in which he introduced himself and discussed why he thought renting the unit to him would be good for both him and Respondent, she wrote the following email to [REDACTED]:

This is bold, innovative, and creative and nearly dispositive. But I thought you indicated that he would not sign the Addendum which is what I ask of all tenant applicants and which all comply with the signing.

Otherwise he's OK with these submissions. **I presume that he's an American Black person which is fine with me.** [Emphasis added]

[REDACTED] replied to Respondent on December 19, 2016, and stated that she would go to Complainant's agent with the message that while everything was fine with his application, he needed to agree to sign the Addendum or Respondent would not rent to him.

Later on December 19, 2016, and before [REDACTED] had a chance to speak with Complainant's agent, Respondent wrote the following email to [REDACTED]:

Oh, so you have his license. It annoyed me, among other withholds, that there was not this basic request submitted. Then why all the secrecy?

I woke up this AM saying but I have no index to his income, a necessary tool, or even the prior income. The letter from Verizon, plus the seemingly practiced outreach direct to the LL, distresses as it only says he is welcome to the Team. He could be the Custodian which is OK if he makes enough money to support the rent which is a question which must be answered.

It goes without saying that the lack of pay stubs means the letter must suffice but it says nothing.

Sorry but this guy has me in a spin,

Adrienne

[REDACTED]:<sup>1</sup> New venture; hesitant; a lawyer who does not apply with all docs?; "standard" Weichert lease is NOT the lease as the listing says it is required (failure of his agent to read listing); family is away in the Carolina's; no ties here; never missed a rent pay at 1/5 of this rent (means nothing); refused addendum and didn't ask to understand the children reference nor to have it deleted (no warning!); \$175,000

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<sup>1</sup> [REDACTED] is Respondent's life partner, and this portion of the email represents what Respondent says [REDACTED] told her about Complainant's application.

salary not appropriate for this rental; keeps reasonable rental away from people who need it.

ABB:<sup>2</sup> **Black is OK with me**; I stepped forward to negotiate a lower rent; he insisted on Jan 7<sup>th</sup> (25% loss); 2 apps because his agent didn't follow listing statement requirement to use my appl; 24 correspondences to help him demonstrate his willingness to comply; a lotta trouble. [Emphasis added]

Later in the evening on December 19, 2016, Respondent replied to another email from [REDACTED] regarding Complainant's application. She wrote in relevant part:

As you knew, and I did not, **that is he is a black person** you may have been reluctant to take such a strong tone with him and thus we have both been exposed to an unwarranted delay and a good deal of back and forth until his partial submissions, still lacking, arrived on Friday, direct me by email – which I thought very odd that he had obtained my contact data and sued it direct.

Additionally, while I believe I hear a reluctance on your part to pursue the issue of any applicant signing a lease which includes my Addendum form (approved by my attorney), which you indicate you yourself would not sign, I have to remember that any number of tenants have signed that listing of additional requirements along with various other basic lease form items. Mr. Jenkins is free not to do so as anyone else need not. This should not be any further burden placed on you if he so chooses not to sign. [Emphasis added]

On December 21, 2016, [REDACTED] emailed Respondent and told her that she had two applicants who had applied as roommates to rent the unit. The two applicants filled out Respondent's application completely and provided all necessary documentation. Neither applicant objected to signing Respondent's Addendum.

In a December 22, 2016 email from Respondent to [REDACTED], Respondent wrote:

They have been forthcoming with all the needed documentation on a pronto basis and I am impressed, not only that they are anxious (as you may have mentioned) to take possession but that [REDACTED] (who is a Libra like me so there is a kind of bias) took the trouble to write to present the background on his references as, I would say, an additional inducement for me to take them on, the one for the [REDACTED] [REDACTED] having a familiar ring. (I think this shows decency, good manners and a thoughtful business sense.)

Of course, one of my controlling reasons for accepting them is that I wouldn't have to wait for a start date of Jan 7<sup>th</sup> about which the prior candidate was unswerving and instead of wanting to convince the owner of his wanting and needing the unit that applicant made several conditions on the owner, including making his date the owner's date and not accepting the full price, not to mention occluding the financial

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<sup>2</sup>“ABB” is Respondent, and this portion of the email represents what Respondent is saying about Complainant's application at the time that she sent this email to [REDACTED].

information.

In an interview, Complainant told DCR that he was flexible on the start date for the unit but was unwilling to sign Respondent's addendum because it did not allow him to start a family while living in the unit.

Respondent entered a lease with two tenants on December 23, 2016. Neither tenant was Black. Both tenants signed Respondent's Addendum.

In an interview with DCR, [REDACTED] recalled knowing that Complainant refused to sign the Addendum in part because it disallowed tenants from living with children on the premises. However, [REDACTED] stated that she told Respondent only that Complainant refused to sign the Addendum but did not provide Respondent with his stated reason for not signing it. During the course of the investigation, Respondent agreed to stop requiring that prospective tenants sign the Addendum.

DCR attempted to interview Respondent in order to ascertain among other things her reason for mentioning Complainant's race numerous times in emails to her agent. Respondent refused to speak with DCR regarding the case.

## ANALYSIS

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2(a). "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated." N.J.A.C. 13:4-10.2(b). If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if DCR finds there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial "culling-out process" in which the Director makes a threshold determination of "whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the "quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits." *Ibid*.

### A. Race Discrimination

The LAD makes it unlawful to refuse to rent or lease any real property because of race. N.J.S.A. 10:5-12(g)(1).

Here, the investigation found sufficient evidence to support a reasonable suspicion that Respondent discriminated against Complainant based on race. The investigation showed that Respondent brought up Complainant's race in three separate emails with her agent in which they were discussing Complainant's application to rent the unit. In each instance, Respondent brought up race of her own accord, without any prompting from her agent, and without any relevance to

the potential transaction. In two of the three emails, Respondent noted that Complainant was Black and stated that his race was fine with her. In a December 19, 2016 email to [REDACTED], Respondent insinuated that [REDACTED] treated Complainant with more caution than she would have treated a non-Black applicant and blamed [REDACTED] for having had to go through the application process with Complainant.

Respondent did not offer any reason for commenting about Complainant's race three times during her review of his rental application, and she refused an interview with DCR to explain her comments in any way. While Respondent provided numerous reasons for rejecting Complainant's application, her decision to mention Complainant's race in three separate emails to her agent, when race was in no way relevant to the transaction or mentioned by the agent, along with her decision to deny his application and rent to two white tenants instead, at least suggests that race could have been a motivating factor in her decision not to rent the unit to Complainant. See Donofry v. Autotote Systems, Inc., 350 N.J. Super. 276, 295-97 (App. Div. 2001) (holding that ultimate burden requires a showing that discrimination "made a difference" in employer's decision to take adverse employment action).

At this threshold stage in the process, there is sufficient basis to warrant "proceed[ing] to the next step on the road to an adjudication on the merits." Frank, supra, 228 N.J. Super. at 56. Therefore, the Director finds probable cause to support Complainant's allegations of race discrimination.

## **B. Discriminatory Statements Based on Familial Status in the Addendum**

The LAD prohibits any person from making any statement in connection with renting a property that expresses, directly or indirectly, any limitation, specification or discrimination based on familial status. N.J.S.A. 10:5-12(g)(3).<sup>3</sup>

Because it places a restriction on a tenant's ability to live on the property with a child, Respondent's Addendum is a per se violation of this LAD provision. Therefore, the Director finds probable cause to support allegations that Respondent's Addendum violates the LAD.

## **C. Reprisal for Objecting to Discriminatory Practices**

The LAD makes it unlawful for a housing provider to take reprisals against any person because that person has opposed any practices forbidden under the act. N.J.S.A. 10:5-12(d). As stated above, there is probable cause to believe that the Addendum violates the LAD. Respondent emphasized that she viewed Complainant's refusal to sign the Addendum as a key factor in her decision not to rent to Complainant. To the extent that Respondent based her decision to reject Complainant's application on his opposition to the discriminatory requirement in the Addendum, there is probable cause to support allegations that Respondent's actions violate N.J.S.A. 10:5-12(d).<sup>4</sup>

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<sup>3</sup> The Director hereby amends the complaint to include a claim that Respondent violated the LAD's rule against printing statements that express limitations, specifications or discrimination based on familial status. N.J.A.C. 13:4-2.9(a).

<sup>4</sup> The Director hereby amends the complaint to include a claim that Respondent's conduct violated the LAD's rule against taking reprisals for opposing discriminatory conduct. N.J.A.C. 13:4-2.9(a).

Date: September 27, 2019

A handwritten signature in blue ink that reads "Rachel Wainer Apter". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rachel Wainer Apter, Director  
New Jersey Division on Civil Rights